

LAW LIBRARY  
ARIZONA ATTORNEY GENERAL

November 20, 1951  
Op. No. 51-305

Richard N. Ragland, Legal Officer  
Patrol Squadron 812  
c/o Fleet Post Office  
San Francisco, California

My dear Sir:

This acknowledges receipt of your letter of November 19, 1951, in which you ask the opinion of this office on the following proposition:

"H, an enlisted man in the squadron married W, his wife, on January 22, 1948 at Yuma, Arizona. W had formerly been married but had obtained an interlocutory judgment in California on August 26, 1947. She believed this to be a final decree and that she was legally divorced at the time. Both she and her husband, H, married in good faith. A final judgment was entered on September 13, 1948. Subsequently, two children were born. The first was born October 18, 1948 and the second on June 17, 1951.

The questions arise whether H and W are legally married or must remarry in order to correct the error, and whether the children are legitimate or whether they must legally be adopted by their father in order that they be considered his heirs should he die intestate."

We assume that the laws of Arizona are applicable to the proposition which you present because the parents are residents of Arizona.

Obviously the marriage between H and W on a date prior to the California Interlocutory Decree's becoming final is not a valid marriage. In order that H and W may be legally husband and wife it is necessary that they remarry.

The children born of this invalid union are nevertheless legitimate under the laws of Arizona. Section 27-401 ACA 1939 provides:

51-305

Richard N. Ragland  
c/o Fleet Post Office  
San Francisco, Calif

November 20 , 1951  
Page Two

"All children declared legitimate.--Every child is the legitimate child of its natural parents and is entitled to support and education as if born in lawful wedlock, except the right to dwelling or a residence with the family of its father, if such father be married. It shall inherit from its natural parents and from their kindred heir, lineal and collateral, in the same manner as children born in lawful wedlock. This section shall apply to cases where the natural father of any such child is married to one other than the mother of said child, as well as where he is single."

said: In re Cook's Estate, 63 Ariz. 78, 159 Pac. 2d 797, it is

"Under the provisions of this section, a child born out of wedlock after 1921 was for all purposes the legitimate child of its father with full rights of inheritance and capacity to contest its father's will even though it was never adopted as provided by statute."

We trust that this answer to your proposition may properly serve your purposes.

Very truly yours,

FRED O. WILSON  
Attorney General

PHIL J. MUNCH  
Assistant Attorney General

PJM:f